



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2022-0753, FRL-10190-01-R10]

#### Air Plan Approval; ID; State Board Composition

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve a revision to the Idaho State Implementation Plan submitted on August 9, 2022. The State of Idaho made the submission to meet the state board composition requirements of the Clean Air Act.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2022-0753, at [www.regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about Confidential Business Information or multimedia submissions, and general guidance on making effective comments, please visit

**FOR FURTHER INFORMATION CONTACT:** Kristin Hall, EPA Region 10, 1200

Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-6357 or *hall.kristin@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, the use of “we” is intended to refer to the EPA.

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### **I. Background**

Clean Air Act section 128 requires that each State Implementation Plan (SIP) include provisions to regulate state boards and agency heads that approve permits or enforcement orders under the Clean Air Act. The section has two subsections. The first, 128(a)(1), governs board composition and requires that at least a majority of board members represent the public interest and do not derive any significant portion of income from persons subject to permits or enforcement orders under the Clean Air Act. The second, 128(a)(2), requires that board members and agency heads with similar powers adequately disclose any potential conflicts of interest.

The current Idaho SIP includes two provisions that were approved by the EPA as meeting the Clean Air Act state board requirements, most recently in 2013.<sup>1</sup> Specifically, we approved the Idaho Governor's Executive Order regarding Appointment of Members of the Board of Environmental Quality as meeting the board composition requirements of

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<sup>1</sup> 78 FR 63394, October 24, 2013.

section 128(a)(1),<sup>2</sup> and we approved the Idaho Ethics in Government Act as meeting the conflict of interest disclosure requirements of section 128(a)(2).<sup>3</sup>

Since that time, the Idaho Legislature updated State statute to effectively replace the prior executive order. Specifically, the legislature updated Idaho Code section 39-107, which establishes requirements to be followed when appointing members to the Idaho Board of Environmental Quality.<sup>4</sup> On August 9, 2022, the Idaho Department of Environmental Quality submitted the statutory revision to the EPA for approval.

## **II. Evaluation**

The revision to Idaho Code section 39-107, at paragraph (1)(a), adds the requirement that at least four of the seven members of the Idaho Board of Environmental Quality must represent the public interest and not derive any significant portion of their income from persons subject to air quality permits or enforcement orders.

After reviewing the submission, we have determined that Idaho Code 39-107, State effective July 1, 2022, is consistent with Clean Air Act section 128(a)(1) requirements.<sup>5</sup>

## **III. Proposed Action**

The EPA is proposing to approve Idaho's August 9, 2022 SIP revision as meeting the board composition requirements of Clean Air Act section 128(a)(1). Specifically, we propose to approve and incorporate by reference Idaho Code 39-107, State effective July 1, 2022, into the Idaho SIP at 40 CFR 52.670(c).<sup>6</sup> As discussed in Section II of this

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<sup>2</sup> Executive Order 2013-06, dated June 26, 2013, and renewed by Executive Order 2016-07, dated December 14, 2016.

<sup>3</sup> Idaho Code sections 59-701 through 59-705, subsequently relocated to Idaho Code Title 74 Chapter 4, effective July 1, 2015. See 84 FR 14067, April 9, 2019 for the EPA's proposed determination that the relevant, substantive components of the law, approved for purposes of SIP authority, were retained in the recodification, and see 85 FR 57723, September 16, 2020, finalizing that rulemaking action.

<sup>4</sup> The EPA first approved this statutory provision into the Idaho SIP on July 28, 1982 (47 FR 32530), and approved a subsequent revision on January 16, 2003 (68 FR 2217).

<sup>5</sup> We note that Idaho's August 9, 2022 SIP revision addresses the board composition requirement under CAA section 128(a)(1). The revision does not affect EPA's prior determination that the Idaho SIP satisfies CAA section 128(a)(2), and that prior determination is outside the scope of this action.

<sup>6</sup> 40 CFR 52.670(c) consists of EPA approved regulatory provisions.

preamble, this statutory provision replaces a prior executive order issued by the Idaho Governor and approved by the EPA as meeting the same requirements. Therefore, we are proposing to remove the prior executive order from the Idaho SIP at 40 CFR 52.670(e).<sup>7</sup>

#### **IV. Incorporation by Reference**

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provision described in Section III of this preamble. The EPA has made, and will continue to make, these documents generally available through *regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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<sup>7</sup> Executive Order 2013-06, dated June 26, 2013, and renewed by Executive Order 2016-07, dated December 14, 2016. 40 CFR 52.670(e) consists of EPA approved nonregulatory provisions and quasi-regulatory measures.

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of the requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking would not apply on any Indian reservation land or in any other area in Idaho where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule would not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 10, 2023.

Casey Sixkiller,  
*Regional Administrator, Region 10.*

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